IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition NO. 625 /2004

PETITIONERS

:1. Shyam Lal Agrawal,
aged about 55 years,
S/o.Laxmi Narayan Agrawal
R/o. Bus Stand Charoda,
B.M.Y.,Tahsil and District
Durg (C.G.) **(Dead)**

2. Mohan Lal Agrawal,
Aged about 50 years,
S/o. Laxmi Narayan Agrawal
R/o. House No. 16/491
Lodhipara Station Road,
Raipur, Tahsil and District
Raipur (C.G.)

3. Madan Lal Agrawal,
Aged about 48 years
S/o. Laxminarayan Agrawal
R/o. Bus Stand Charoda
Tahsil and Distt. Durg (C.G.)

4. Goverdhan Lal Agrawal
Aged about 45 years,
S/o. Laxmi Narayan Agrawal
R/o. Lodhipara Raipur,
Tah. and Distt. Raipur (C.G.)

5. Purshottam Das Agrawal
Aged about 35 years
S/o. Laxmi Narayan Agrawal

(4)

6. Tansukh Das Agrawal,
Aged about 38 years
S/o. Laxmi Narayan Agrawal
No. 5 & 6 R/o.Lodhipara
Raipur, Tahsil and District
Raipur (C.G.)

7. Mansukh Das Agrawal
Aged about 33 years
S/o. Laxmi Narayan Agrawal
R/o. Station Road, Raipur,
Tah. and Distt. Raipur (C.G.)

VERSUS

RESPONDENT : Sardar Guruvachan Singh,
Aged about 35 years
S/o. Rawel Singh, Friends
Hotel Restorent, Station Road
Lodhipara, Raipur (C.G.)

WRIT PETITION U/A 227 OF THE CONSTITUTION OF INDIA

(119) A.F.R.

HIGH COURT OF JUDICATURE AT BILASPUR : CHHATTISGARH

Writ Petition No.625 of 2004

Shyam Lal Agrawal & Others.

Versus

Sardar Guruvachan Singh

POST FOR ORDER ON 6th AUGUST, 2004

Sd/-
L.C.BHADOO
Judge

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.625 of 2004

Shyam Lal Agrawal & Others.

Versus

Sardar Guruvachan Singh

Present:-

Shri S.K. Beriwal, Advocate: For the petitioners.

Shri B.P. Sharma, Advocate: For the respondent.

O R D E R

(Passed on 6th August, 2004)

L.C. BHADOO, J.

By this writ petition filed under Article 227 of the Constitution of India the petitioners have questioned the legality, validity and propriety of the order dated 24-1-2004 (Annexure-P/7) passed by the learned 8th Additional District Judge (Fast Track Court) Raipur, (Khagendra Singh), whereby the learned Additional District Judge has stayed the further proceedings of the Civil Suit No.23-A/2002 filed by the petitioners herein against the respondent for payment of arrears of rent and eviction of the disputed premises.

(2) Brief facts leading to filing of this writ petition necessary for the disposal of this petition are that respondent herein took the disputed premises ad measuring 990 sq. feet on rent in the year 1982 from the original landlord Amarjeet Singh. However, thereafter Amarjeet Singh vide registered sale deed dated 19-5-1985 sold a portion of 770 sq. feet, out of 990 sq. feet to late Smt. Gulab Bai Agrawal. Thereafter, in the year 1988 late Smt. Gulab Bai Agrawal filed a suit against the respondent herein for arrears of rent and eviction of the disputed premises on the ground of default in

payment of rent and nuisance under Section 12 of the M.P. Accommodation Control Act, 1961, which came to be registered as Civil Suit No.67-A/99. Later on, it was registered as 23-A/2002. The defence of the respondent herein in that eviction suit was that he is not a tenant of Smt. Gulab Bai Agrawal. During the pendency of this civil suit, Smt. Gulab Bai Agawal died, therefore, the petitioners were brought on record as legal heirs of late Smt. Gulab Bai.

(3) Respondent herein also filed a suit for specific performance of the contract for sale regarding the said disputed premises against the original landlord and as also against the petitioners and that suit was registered as 74-A/99. Ultimately, that suit for specific performance of the contract for sale came to be dismissed by the learned District Judge, Raipur vide judgment dated 8-4-2000, against which the respondent herein has filed an appeal before this Court.

(4) During the pendency of the eviction suit against the respondent herein an application under Section 10 of the Code of Civil Procedure was filed on behalf the respondent herein for staying the proceedings of the eviction suit on the ground of pendency of the suit for specific performance of the contract for sale regarding the disputed premises, but that application was dismissed by the 3rd Additional District Judge vide order dated 16-3-99 on the ground that even though one or two issues are similar in both the suits but the matter in issue in the suits was different. Against this order respondent herein had not preferred any revision, therefore that order attained finality. However, after disposal and dismissal of the suit for specific performance, the respondent herein again filed an application under Section 151 of the Code of Civil Procedure before the Additional District Judge for staying the proceedings of eviction suit on the ground that he has preferred an appeal before the High Court against the dismissal of his suit and that is pending for decision. Even that application under Section 151 of the Code of Civil Procedure was rejected by the Additional District Judge vide its order dated 20th June 2000. Thereafter, the proceeding of the

eviction suit was allowed to be continued and ultimately after allowing both the parties to lead their evidence, final arguments were heard by the learned 8th Additional District Judge, after hearing the arguments, case was fixed for judgment on 31st December 2003. However, on 31st December 2003 counsel for the defendant/respondent herein made an oral request that the defendant has preferred an appeal against the dismissal judgment of the suit for specific performance, therefore, proceedings of the eviction suit be stayed. Ultimately, vide impugned order learned Additional District Judge stayed the proceedings observing that the parties in both the suits are same and some subject matter of the suit is also almost similar. As the parties are same, therefore, proceedings of the suit were stayed, against which the petitioners have filed this writ petition.

(5) I have heard Shri S.K. Beriwal, learned counsel for the petitioners and Shri B.P. Sharma, learned counsel for the respondent.

(6) The first objection raised by the learned counsel for respondent is that against the impugned order writ petition under Article 227 of the Constitution of India is not maintainable. The petitioners herein ought to have preferred revision under Section 115 of the Code of Civil Procedure. But this argument of the learned counsel is without any force because as far as filing of the revision under Section 115 of the Code of Civil Procedure is concerned, proviso to sub-section (1) of Section 115 of the C.P.C. lays down that "Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings." Therefore, after the amendment in the Code of Civil Procedure, by Act No.46 of 1999 revisional power under Section 115 of the C.P.C. has been curtailed to a great extent and as per the proviso extracted above revision against any order lies only in the case when had the order impugned been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings. In this case, the order

impugned was passed by the learned 8th Additional District Judge on an oral request made by the counsel for the defendant for staying of the proceedings under inherent powers till the disposal of the appeal against the judgment dated 8-4-2000 passed in suit for specific performance of the contract. Therefore, even if the impugned order had been made in favour of the petitioners herein, the suit could not have been disposed of and still the judgment was to be passed by the learned District Judge on the merits of the case. Therefore, in my opinion, the contention of the learned counsel for the respondent is without force and the same is not tenable as per the provision of Section 115 of the C.P.C.

(7) Now, coming to the question about the maintainability of this writ petition under Article 227 of the Constitution of India is concerned, the Hon'ble Apex Court in the matter of **Surya Dev Rai V. Ram Chander Rai & Ors.** reported in **JT 2003 (6) SC 465** has held that:

> "Interlocutory orders passed by courts subordinate to the High Court against which the remedy of revision has been excluded are open to challenge and subject to certiorari and the supervisory jurisdiction of the High Court. In exercise of certiorari or supervisory jurisdiction the High Court will not convert itself into a court of appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inference or correct errors of mere formal or technical character. Where a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it has or the jurisdiction though available is being exercised in a manner not permitted by law and failure of justice or grave injustice has resulted, the High Court may step in to exercise its supervisory jurisdiction."

In another matter of **State, through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru and Ors.** reported in **JT 2003 (4) SC 605** the Hon'ble Apex Court held that:

> "Article 227 of the Constitution of India gives the High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order. However, the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purport to exercise any such discretionary power. It is settle law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate courts and Tribunal's within the bounds of their authority and not to correct mere errors. Further where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised "as the cloak of an appeal in disguise"."

Therefore, in view of the law laid down by the Hon'ble Apex Court where the High Court reaches to the conclusion that the subordinate court has exercised the jurisdiction in a manner not permitted by law and failure of justice or grave injustice has resulted, then High Court can step in to exercise its supervisory jurisdiction.

(8) Looking to the above principle, now, I shall proceed to examine the facts of the present case and to see whether the impugned order passed by the 8th Additional District Judge stood up to the test laid down by the Hon'ble Apex Court in the above two decisions. It is admitted position that the predecessor entitled of the petitioners herein i.e. Smt. Gulab Bai after purchasing the disputed premises from the original landlord of the respondent herein, namely Amarjeet Singh, filed a suit for eviction against

the respondent herein on the ground of default, arrears of rent and nuisance under Section 12 of the M.P. Accommodation Control Act, 1961, whereas, the respondent herein filed a suit for specific performance of the contract for sale against original landlord Amarjeet Singh and the petitioners herein. The said suit came to be dismissed by the learned District Judge after trial vide its judgment dated 8-4-2000, therefore, in my opinion, even though same parties were there in the above two suits, but as far as the other requirement of Section 10 of the Code of Civil Procedure is concerned, the condition, the matter in issue should also be directly and substantially in issue in a previously instituted suit must be satisfied in order to stay the proceeding of the suit instituted later in time. But in the present case, the matter in both the cases cannot be held to be directly and substantially the same for the reason that the respondent herein filed a suit for specific performance of the contract for sale against the original landlord whereas, the petitioners herein filed a suit for eviction on the ground of default, arrears of rent and nuisance against the respondent herein in which the trial Court i.e. learned 8th Additional District Judge was required to decide as to whether the petitioners herein were able to establish the relationship of the landlord and tenant between them and respondent and second issue was whether the petitioners herein have been able to prove the ground of default against the respondent herein as envisaged under Section 12(1)(a) of the M.P. Accommodation Control Act, 1961, whereas, in the suit for specific performance of the contract for sale was filed by the respondent herein. The issue involved was whether original landlord Amarjeet Singh had entered into a contract for sale of the disputed premises with the respondent herein. In that case, the respondent herein was required to prove (i) whether the contract for sale was true and genuine, (ii) whether vendee was ready and willing to perform his part of the contract and (iii) whether the subsequent transferee had the notice of the earlier agreement. If all the ingredients necessary in issue of specific performance of the contract are found to establish and decree would follow, then sale deed would be executed and registered by either of the parties or on their failure by the Court and

thereafter vendee would acquire the title of the property in dispute. Without acquiring the title in that suit in the disputed property respondent was not entitled to stall the proceeding of eviction suit. Moreover, if the respondent will succeed in the appeal, then he will be entitled for possession and for that indefinite event the rights of the petitioners available to them under Section 12 of the M.P. Accommodation Control Act, 1961 cannot be put in jeopardy.

(9) It is thus clear from the above facts that there was no substantial identify of the subject matter in both the suits and the field of controversy between the parties in two suits. The matter directly and substantially in issue of eviction suit was not the same in the suit of specific performance of the contract. Moreover, the suit for specific performance filed by the defendant had already been dismissed by the learned District Judge vide its judgment dated 8-4-2000 holding that the respondent herein was not able to prove the existence and execution of the agreement for sale by the original landlord regarding disputed premises. In this connection, I am fortified in my view by the various judgments of the Madhya Pradesh High Court, Orissa High Court and Patna High Court in the matters of **Prakash Chand Soni Vs. Anita Jain** reported in **2002 (2) M.P.L.J.121, Trivenidevi Naraindas Vs. Vijay Mohan Bose** reported in **1976 M.P.L.J. 163, Lachaman Nepak and others Vs. Badankayalu Syama Babu Subudhi and another** reported in **AIR 1989 ORISSA 154** and **Dr. N.P. Tripathi Vs. Smt. Dayamanti Devi and another** reported in **AIR 1988 PATNA 123.**

(10) Even otherwise, it is not out of place to mention here that application for stay filed under Section 10 of the Code of Civil Procedure by the respondent herein was rejected by the 3rd Additional District Judge on 16-3-99 holding that the proceedings of the suit cannot be stayed as the provisions of Section 10 of the C.P.C. were not applicable. After dismissal of the suit for specific performance, learned Additional District Judge again rejected the application of the respondent herein filed under Section 151 of the C.P.C. for staying the proceedings of the Civil Suit vide order dated

20-6-2000. Therefore, in view of these orders also, the learned 8th Additional District Judge was not within his right to stay the proceedings of the suit vide impugned order and that too simply on an oral request made by the counsel for the respondent herein. Therefore, the above power exercised by the learned 8th Additional District Judge under the guise of inherent power is nothing but misuse of the judicial process by the learned Additional District Judge.

(11) Learned counsel for the respondent argued that the learned Additional District Judge has passed the impugned order by exercising the inherent power under Section 151 of the Code of Civil Procedure. In this connection, it will be useful to refer the judgment of the Hon'ble Apex Court. The Hon'ble Apex Court in the matter of **Manohar Lal Chopra V. Rai Bahadur Rao Raja Seth Hiralal** reported in **AIR 1962 SC 527** has held that:

> "It is well settled that the provisions of the Code are not exhaustive, for the simple reason that the Legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing the procedure for them. Section 151 itself says that nothing in the Code shall be deemed to limit or otherwise affect the inherent power of the court to make orders necessary for the ends of justice. It has further been said that when the Code itself recognizes the existence of the inherent power of the Court, there is no question of implying any powers outside the limits of the Code. The inherent powers of the Court have to be resorted to only ex debito justitiae to do the real and substantial justice for the administration of which alone it exists to prevent abuse of the process of the Court. It should not be exercised capriciously and arbitrarily."

Therefore, inherent power under Section 151 of the Code of Civil Procedure was not available to the learned Additional District Judge looking to the facts and circumstances of the case and that too on an oral request made by the counsel for the respondent for the reason that the request of

the respondent was already rejected twice for staying the eviction proceedings of the suit by the predecessors of the learned Additional District Judge vide orders dated 16-3-99 and 20-6-2000. The inherent power under Section 151 of the C.P.C. should be exercised by the Court in very exceptional circumstances and that such powers should not be exercised unless exercise of such power is absolutely essential for securing the ends of justice and to over come the failure of justice. Further the learned Additional District Judge by resorting to the inherent power under Section 151 of the Code of Civil Procedure will be frustrating the very object and purpose of a bilateral munificent piece of legislation i.e. the M.P. Accommodation Control Act, 1961 setting at naught the legislative mandate thereby rendering nugatory the provisions of Section 12 of the M.P. Accommodation Control Act, 1961 and to take recourse to such a procedure would not only be not subservient to the ends of justice but would be overriding the special procedure mandated by a self contained Code as the Control Act. It would indeed be an abuse of the process of the Court by trying to induce the Court to render Section 12 of the Act as otiose and redundant. Therefore, powers under Section 151 of the Code was not available to the trial Court in this case.

(12) Apart from this, learned counsel for the petitioners argued that even on the principle of *res judicata* the learned Additional District Judge was not within its right to pass the impugned order, as the applications of the respondent herein filed under Section 10 of the C.P.C. and thereafter under Section 151 of the C.P.C. were already rejected vide orders dated 16-3-99 and 20-6-2000, as the principles of *res judicata* also applies in the case of intermediatory order passed in the same proceeding. I am entirely in agreement with the point raised by the learned counsel for the petitioners, as the Hon'ble Apex Court in the matter of **Satyadhanc Ghosal and others** v. **Smt. Deorajan Debi and another** reported in **AIR 1960 SC 941** has held that:

> "The principle of *res judicata* applies also as between two stages in the same litigation to this extent that a Court, whether the trial court or a

> higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings."

In this connection, the Madhya Pradesh High Court in the matter of **Anandi Lal Ahirwar Vs. Satya Vrat Chaturvedi** reported in **2004 (I) MPJR 175** had held that:

> "Once the application for summoning witnesses rejected earlier- that order will operate as *res judicata* - Fresh application for calling the witness cannot be allowed."

(13) Therefore, in view of the above law on the point, I am of the opinion that when the application of the respondent was rejected twice earlier on the ground of principle of *res judicata,* the learned 8th Additional District Judge ought not to have exercised the power under Section 151 of the Code of Civil Procedure and that too on an oral request made by the counsel for the respondent and further that the matter was already fixed for judgment, after hearing the arguments.

(14) In the result, the impugned order being perverse, incorrect and contrary to settled law, the same cannot be sustained, therefore, this order deserves to be quashed while exercising the power under Article 227 of the Constitution of India, as such this writ petition is allowed. The impugned order is quashed. The trial Court is directed to proceed with the trial of the suit.

(15) Before parting with this order, I feel it necessary to observe that the learned Additional District Judge passed the impugned order by ignoring the earlier orders dated 16-3-99 and 20-6-2000 passed by his predecessors rejecting the prayer of the respondent herein for staying the proceedings of the eviction suit. It is astounding that such a senior judicial officer has passed the impugned order ignoring the basic principles of law and the two earlier orders. The impugned order reflects upon the competence, knowledge and conduct of the judicial officer. Therefore, the Registry of

this Court is directed to enter in the A.C.R. of the officer and place the copy of this order before Hon'ble the Chief Justice for appropriate action against the officer.

Sd/-
L.C.BHADOO
Judge

Barve